

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

Case No. 5:16-CV-00542 (VEB)

BERNICE JEANETTE ARANDA,

Plaintiff,

vs.

NANCY BERRYHILL, Acting  
Commissioner of Social Security,

Defendant.

DECISION AND ORDER

**I. INTRODUCTION**

In April of 2010, Plaintiff Bernice Jeanette Aranda applied for Supplemental Security Income and Disability Insurance benefits under the Social Security Act. The Commissioner of Social Security denied the applications.<sup>1</sup>

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<sup>1</sup> On January 23, 2017, Nancy Berryhill took office as Acting Social Security Commissioner. The Clerk of the Court is directed to substitute Acting Commissioner Berryhill as the named defendant in this matter pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure.

1 Plaintiff, by and through her attorneys, The Law Offices of Rohlfing and  
2 Kalagian, LLP, Marc V. Kalagian, Esq., of counsel, commenced this action seeking  
3 judicial review of the Commissioner's denial of benefits pursuant to 42 U.S.C. §§  
4 405 (g) and 1383 (c)(3).

5 The parties consented to the jurisdiction of a United States Magistrate Judge.  
6 (Docket No. 11, 13, 25, 26). On February 9, 2017, this case was referred to the  
7 undersigned pursuant to General Order 05-07. (Docket No. 24).

## 8 9 **II. BACKGROUND**

10 Plaintiff applied for benefits on April 12, 2010, alleging disability beginning  
11 March 26, 2010. (T at 242-47, 248-49).<sup>2</sup> The applications were denied initially and  
12 on reconsideration. Plaintiff requested a hearing before an Administrative Law  
13 Judge ("ALJ").

14 On October 17, 2011, a hearing was held before ALJ Milan Dostal. (T at 42).  
15 Plaintiff appeared with her attorney and testified. (T at 47-52). The ALJ also  
16 received testimony from Alan Boroskin, a vocational expert. (T at 52-57).

17 On January 19, 2012, ALJ Dostal issued a written decision denying the  
18 applications for benefits. (T at 89-104). On July 18, 2013, the Appeals Council

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19 <sup>2</sup> Citations to ("T") refer to the administrative record at Docket No. 18.

1 granted Plaintiff's request for review and remanded the matter for further  
2 proceedings. (T at 105-110).

3 A second administrative hearing was conducted by ALJ Sharilyn Hopson on  
4 March 24, 2014. (T at 60). Plaintiff appeared with her attorney and testified. (T at  
5 63-77). The ALJ also received additional testimony from Mr. Boroskin, the  
6 vocational expert. (T at 77-80).

7 ALJ Hopson issued a written decision on June 5, 2014, denying the  
8 applications for benefits. (T at 17-37). ALJ Hopson's decision became the  
9 Commissioner's final decision on February 12, 2016, when the Appeals Council  
10 denied Plaintiff's request for review. (T at 1-7).

11 On March 24, 2016, Plaintiff, acting by and through her counsel, filed this  
12 action seeking judicial review of the Commissioner's denial of benefits. (Docket No.  
13 1). The Commissioner interposed an Answer on September 6, 2016. (Docket No.  
14 17). The parties filed a Joint Stipulation on January 3, 2017. (Docket No. 23).

15 After reviewing the pleadings, Joint Stipulation, and administrative record,  
16 this Court finds that the Commissioner's decision must be affirmed and this case be  
17 dismissed.

### III. DISCUSSION

#### A. Sequential Evaluation Process

The Social Security Act (“the Act”) defines disability as the “inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a claimant shall be determined to be under a disability only if any impairments are of such severity that he or she is not only unable to do previous work but cannot, considering his or her age, education and work experiences, engage in any other substantial work which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B). Thus, the definition of disability consists of both medical and vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9<sup>th</sup> Cir. 2001).

The Commissioner has established a five-step sequential evaluation process for determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920. Step one determines if the person is engaged in substantial gainful activities. If so, benefits are denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If not, the decision maker proceeds to step two, which determines whether the claimant has a

1 medically severe impairment or combination of impairments. 20 C.F.R. §§  
2 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

3 If the claimant does not have a severe impairment or combination of  
4 impairments, the disability claim is denied. If the impairment is severe, the  
5 evaluation proceeds to the third step, which compares the claimant's impairment(s)  
6 with a number of listed impairments acknowledged by the Commissioner to be so  
7 severe as to preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii),  
8 416.920(a)(4)(iii); 20 C.F.R. § 404 Subpt. P App. 1. If the impairment meets or  
9 equals one of the listed impairments, the claimant is conclusively presumed to be  
10 disabled. If the impairment is not one conclusively presumed to be disabling, the  
11 evaluation proceeds to the fourth step, which determines whether the impairment  
12 prevents the claimant from performing work which was performed in the past. If the  
13 claimant is able to perform previous work, he or she is deemed not disabled. 20  
14 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step, the claimant's residual  
15 functional capacity (RFC) is considered. If the claimant cannot perform past relevant  
16 work, the fifth and final step in the process determines whether he or she is able to  
17 perform other work in the national economy in view of his or her residual functional  
18 capacity, age, education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),  
19 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

1 The initial burden of proof rests upon the claimant to establish a *prima facie*  
2 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9<sup>th</sup>  
3 Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9<sup>th</sup> Cir. 1999). The initial burden  
4 is met once the claimant establishes that a mental or physical impairment prevents  
5 the performance of previous work. The burden then shifts, at step five, to the  
6 Commissioner to show that (1) plaintiff can perform other substantial gainful  
7 activity and (2) a “significant number of jobs exist in the national economy” that the  
8 claimant can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9<sup>th</sup> Cir. 1984).

9 **B. Standard of Review**

10 Congress has provided a limited scope of judicial review of a Commissioner’s  
11 decision. 42 U.S.C. § 405(g). A Court must uphold a Commissioner’s decision,  
12 made through an ALJ, when the determination is not based on legal error and is  
13 supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9<sup>th</sup> Cir.  
14 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9<sup>th</sup> Cir. 1999).

15 “The [Commissioner’s] determination that a plaintiff is not disabled will be  
16 upheld if the findings of fact are supported by substantial evidence.” *Delgado v.*  
17 *Heckler*, 722 F.2d 570, 572 (9<sup>th</sup> Cir. 1983)(citing 42 U.S.C. § 405(g)). Substantial  
18 evidence is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119  
19 n 10 (9<sup>th</sup> Cir. 1975), but less than a preponderance. *McAllister v. Sullivan*, 888 F.2d

1 599, 601-02 (9<sup>th</sup> Cir. 1989). Substantial evidence “means such evidence as a  
2 reasonable mind might accept as adequate to support a conclusion.” *Richardson v.*  
3 *Perales*, 402 U.S. 389, 401 (1971)(citations omitted). “[S]uch inferences and  
4 conclusions as the [Commissioner] may reasonably draw from the evidence” will  
5 also be upheld. *Mark v. Celebreeze*, 348 F.2d 289, 293 (9<sup>th</sup> Cir. 1965). On review,  
6 the Court considers the record as a whole, not just the evidence supporting the  
7 decision of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9<sup>th</sup> Cir.  
8 1989)(quoting *Kornock v. Harris*, 648 F.2d 525, 526 (9<sup>th</sup> Cir. 1980)).

9 It is the role of the Commissioner, not this Court, to resolve conflicts in  
10 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one rational  
11 interpretation, the Court may not substitute its judgment for that of the  
12 Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9<sup>th</sup>  
13 Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be  
14 set aside if the proper legal standards were not applied in weighing the evidence and  
15 making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d  
16 432, 433 (9<sup>th</sup> Cir. 1987). Thus, if there is substantial evidence to support the  
17 administrative findings, or if there is conflicting evidence that will support a finding  
18 of either disability or non-disability, the finding of the Commissioner is conclusive.  
19 *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9<sup>th</sup> Cir. 1987).

1 **C. Commissioner's Decision**

2 ALJ Hopson determined that Plaintiff had not engaged in substantial gainful  
3 activity since March 26, 2010, the alleged onset date, and met the insured status  
4 requirements of the Social Security Act through June 30, 2014 (the "date last  
5 insured"). (T at 22). The ALJ found that Plaintiff's posterior subcapsular/polar  
6 cataract in the left eye, myopia, astigmatism, presbyopia, degenerative  
7 macularedema, degenerative disc disease of the lumbar spine, nerve degeneration,  
8 minimal spondylosis, scoliosis, bilateral torn rotator cuffs, obesity, depression, and  
9 anxiety were "severe" impairments under the Act. (Tr. 22-23).

10 However, the ALJ concluded that Plaintiff did not have an impairment or  
11 combination of impairments that met or medically equaled one of the impairments  
12 set forth in the Listings. (T at 23).

13 The ALJ determined that Plaintiff retained the residual functional capacity  
14 ("RFC") to occasionally lift/carry 20 pounds, frequently lift/carry 10 pounds,  
15 stand/walk for 6 hours in an 8-hour workday, sit for 6 hours in an 8-hour workday,  
16 frequently climb stairs, never climb ladders/ropes/scaffolds, occasionally  
17 bend/stoop/kneel/crouch/crawl/twist, never work above shoulder level bilaterally,  
18 not be required to read or see anything smaller than 9 point print, and perform  
19



1 moderately complex tasks with a Specific Vocational Preparation (SVP) score of 4  
2 or less. (T at 25).

3 The ALJ concluded that Plaintiff could perform her past relevant work as a  
4 retail sales clerk. (T at 30). Accordingly, the ALJ determined that Plaintiff was not  
5 disabled within the meaning of the Social Security Act between March 26, 2010 (the  
6 alleged onset date) and June 5, 2014 (the date of the decision) and was therefore not  
7 entitled to benefits. (T at 31). As noted above, the ALJ's decision became the  
8 Commissioner's final decision when the Appeals Council denied Plaintiff's request  
9 for review. (T at 1-7).

#### 10 **D. Disputed Issues**

11 As set forth in the Joint Stipulation (Docket No. 23, at p. 4), Plaintiff offers a  
12 single argument in support of her claim that the Commissioner's decision should be  
13 reversed. She argues that the ALJ's residual functional capacity determination is not  
14 supported by substantial evidence.

### 16 **IV. ANALYSIS**

17 An ALJ's assessment of the claimant's residual functional capacity ("RFC")  
18 must be upheld if the ALJ has applied the proper legal standard and substantial  
19 evidence in the record supports the decision. *Bayliss v. Barnhart*, 427 F.3d 1211,

1 1217 (9th Cir. 2005). The ALJ must consider all the medical evidence in the record  
2 and “explain in [her] decision the weight given to . . . [the] opinions from treating  
3 sources, nontreating sources, and other nonexamining sources.” 20 C.F.R. §  
4 404.1527(e)(2)(ii); see also § 404.1545(a)(1).

5 In determining the claimant’s RFC, the ALJ considers those limitations for  
6 which there is support in the record and need not consider properly rejected evidence  
7 or subjective complaints. *See Bayliss*, 427 F.3d at 1217; *see also Batson v. Comm’r*  
8 *of Soc. Sec. Admin.*, 359 F.3d 1190, 1197 (9th Cir. 2004) (holding that the ALJ was  
9 not required to incorporate into RFC findings from treating-physician opinions that  
10 were “permissibly discounted”).

11 An ALJ satisfies the “substantial evidence” requirement by “setting out a  
12 detailed and thorough summary of the facts and conflicting clinical evidence, stating  
13 his interpretation thereof, and making findings.” *Garrison v. Colvin*, 759 F.3d 995,  
14 1012 (9<sup>th</sup> Cir. 2014)(quoting *Reddick v. Chater*, 157 F.3d 715, 725 (9<sup>th</sup> Cir. 1998)).

15 **A. Physical RFC**

16 In this case, the ALJ concluded that Plaintiff retained the RFC to, *inter alia*,  
17 stand and/or walk for 6 hours in an 8-hour workday. (T at 25). However, in June of  
18 2010, Dr. Joseph Hohl, a treating physician, opined that Plaintiff needed to “lead a  
19 very sedentary life.” (T at 427). In August of 2013, Dr. Hohl completed a

1 “checkbox” physical medical source statement, wherein he stated that Plaintiff could  
2 stand and/or walk for less than 2 hours in an 8-hour workday. (T at 526).

3 In disability proceedings, a treating physician’s opinion carries more weight  
4 than an examining physician’s opinion, and an examining physician’s opinion is  
5 given more weight than that of a non-examining physician. *Benecke v. Barnhart*,  
6 379 F.3d 587, 592 (9th Cir. 2004); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.  
7 1995). If the treating or examining physician’s opinions are not contradicted, they  
8 can be rejected only with clear and convincing reasons. *Lester*, 81 F.3d at 830. If  
9 contradicted, the opinion can only be rejected for “specific” and “legitimate” reasons  
10 that are supported by substantial evidence in the record. *Andrews v. Shalala*, 53 F.3d  
11 1035, 1043 (9th Cir. 1995).

12 The ALJ discounted Dr. Hohl’s opinions and concluded that Plaintiff’s  
13 physical RFC exceeded Dr. Hohl’s assessment, including his evaluation of  
14 Plaintiff’s ability to stand and walk. (T at 29). This Court finds the ALJ’s decision  
15 supported by substantial evidence.

16 Dr. Hohl’s June 2010 letter indicating that Plaintiff needed to “lead a very  
17 sedentary life” (T at 427) relates to an issue reserved to the Commissioner and is,  
18 thus, not entitled to any special weight. *See* 20 C.F.R. §404.1527(d)(3), §  
19 404.1527(d)(1); SSR 96-5p, *Ram v. Astrue*, 2012 U.S. Dist. LEXIS 183742 (C.D.

1 Cal. Nov. 30, 2012) (“a treating physician's opinion regarding the ultimate issue of  
2 disability is not entitled to any special weight”); *see also Tonapetyan v. Halter*, 242  
3 F.3d 1144, 1149 (9th Cir. 2001).

4 The ALJ reasonably concluded that Dr. Hohl’s “checkbox” physical medical  
5 source statement was conclusory and lacking in sufficient clinical and objective  
6 support. The ALJ is not obliged to accept a treating source opinion that is “brief,  
7 conclusory and inadequately supported by clinical findings.” *Lingenfelter v. Astrue*,  
8 504 F.3d 1028, 1044-45 (9th Cir. 2007) (citing *Thomas v. Barnhart*, 278 F.3d 947,  
9 957 (9th Cir. 2002)).

10 Moreover, the ALJ outlined the treatment history, which consisted of  
11 generally unremarkable physical examinations (full range of motion, normal gait,  
12 normal motor strength/sensation/reflex) and mild or minor X-ray findings. (T at 29).  
13 The ALJ reasonably concluded that the treatment history was not consistent with the  
14 significant limitations assessed by Dr. Hohl. *See Bayliss v. Barnhart*, 427 F.3d  
15 1211, 1216 (9<sup>th</sup> Cir. 2005)(finding that “discrepancy” between treatment notes and  
16 opinion was “a clear and convincing reason for not relying on the doctor's opinion  
17 regarding” the claimant’s limitations).

18 The ALJ’s RFC determination is also supported by the assessment of Dr. Anh  
19 Tat Hoang, an orthopedic specialist who performed a consultative examination in

1 February of 2011. Dr. Hoang opined that Plaintiff could, *inter alia*, stand and/or  
2 walk for 6 hour in an 8-hour workday. (T at 490).

3 Plaintiff notes, correctly, that Dr. J. Hartman, a State Agency review  
4 physician, concluded that Plaintiff could stand/walk for “at least” 2 hours in an 8-  
5 hour workday, which arguably suggests greater limitation than assessed by the ALJ.  
6 (T at 30). However, the ALJ reasonably concluded that this non-examining opinion  
7 was inconsistent with the treatment record (which contained generally unremarkable  
8 clinical findings and X-ray results) and with the opinion of Dr. Hoang, who had the  
9 opportunity to examine Plaintiff in person.

10 In sum, the record contains conflicting evidence concerning Plaintiff’s  
11 physical limitations. Plaintiff argues that the ALJ should have weighed the evidence  
12 differently and resolved the conflict in favor of Dr. Hohl’s more restrictive  
13 assessment. However, it is the role of the Commissioner, not this Court, to resolve  
14 conflicts in evidence. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989);  
15 *Richardson*, 402 U.S. at 400. If the evidence supports more than one rational  
16 interpretation, this Court may not substitute its judgment for that of the  
17 Commissioner. *Allen v. Heckler*, 749 F.2d 577, 579 (9th 1984). If there is  
18 substantial evidence to support the administrative findings, or if there is conflicting  
19 evidence that will support a finding of either disability or nondisability, the

Commissioner's finding is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9th Cir. 1987). Here, the ALJ's decision was supported by substantial evidence and must therefore be sustained. *See Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999)(holding that if evidence reasonably supports the Commissioner's decision, the reviewing court must uphold the decision and may not substitute its own judgment).

**B. Mental RFC**

As part of his step two and step three analysis, the ALJ concluded that Plaintiff had mild difficulties with social functioning and moderate difficulties with respect to maintaining concentration, persistence, or pace. (T at 24). The ALJ's RFC determination indicates that Plaintiff retained the RFC to perform moderately complex tasks with a Specific Vocational Preparation (SVP) score of 4 or less, but contains no other limitations regarding Plaintiff's ability to perform the mental demands of work-related activity. (T at 25). Plaintiff argues that these conclusions are contradictory and that the ALJ erred by failing to include the social and concentration/persistence/pace limitations in the RFC determination and in the hypothetical questions posed to the vocational expert.

Plaintiff relies on the Ninth Circuit's unpublished disposition in *Hutton v. Astrue*, 491 F. App'x 850, 851 (9<sup>th</sup> Cir. 2012), in which the court held that the ALJ's

1 failure to consider the claimant's mild mental limitations in determining RFC was  
2 legal error requiring remand.

3 However, the ALJ in the present case, unlike the ALJ in *Hutton*, carefully  
4 considered the evidence related to Plaintiff's mild mental impairments and, thus, did  
5 not commit reversible error in deciding not to incorporate them into the RFC  
6 determination or hypotheticals presented to the vocational expert.

7 For example, the ALJ expressly stated that her RFC determination  
8 incorporated the social and concentration/persistence/pace limitations assessed at  
9 steps two and three. (T at 24). In particular, the ALJ noted that Plaintiff lives in an  
10 apartment with her husband, two daughters, and two grandchildren; she walks to the  
11 market with her grandchildren, performs household chores, talks on the telephone,  
12 and attends church. (T at 24, 29). She has sufficient concentration to drive, write  
13 emails, and read devotional literature. (T at 24). Plaintiff does not cite to evidence  
14 of mental health treatment or medical opinions suggesting that the mild to moderate  
15 limitations assessed by the ALJ impacted Plaintiff's ability to perform work-related  
16 activities beyond the limitations already included in the RFC determination. Thus,  
17 this Court finds no error as to the ALJ's conclusion that Plaintiff's mild social  
18 difficulties and moderate limitations regarding concentration/persistence/pace were  
19 adequately considered and accounted for in the RFC determination.

1 In sum, the applicable Regulations require the ALJ to “consider” the limiting  
2 effect of all impairments, including those that are non-severe, but it does not require  
3 the ALJ in every case to “include” those limitations in the RFC determination and/or  
4 in the hypothetical questions presented to the vocational expert. *See* 20 CFR §  
5 404.1545 (e).

6 “Provided the ALJ does not rely on boilerplate language, but actually reviews  
7 the record and specifies reasons supported by substantial evidence for not including  
8 the non-severe impairment [in the RFC determination], the ALJ has not committed  
9 legal error.” *Medlock v. Colvin*, No. CV 15-9609-KK, 2016 U.S. Dist. LEXIS  
10 145692, at \*13 (C.D. Cal. Oct. 20, 2016).

11 In other words, “[u]nlike the ALJ in *Hutton*, the ALJ in this case thoroughly  
12 considered the medical evidence related to Plaintiff’s mild mental impairment at step  
13 four before choosing not to include the limitation in the RFC determination.  
14 Consequently, the ALJ’s omission was not legal error.” *Medlock*, 2016 U.S. Dist.  
15 LEXIS 145692, at \*14; *see also Sisco v. Colvin*, No. 13-01817, 2014 U.S. Dist.  
16 LEXIS 84614, \*7-8 (N.D. Cal. June 20, 2014) (holding that ALJ was not required to  
17 include mental limitations in hypotheticals where ALJ determined that claimant’s  
18 mental impairments were “generally mild in nature” and imposed “no significant  
19 functional limitations”).



1  
2 **V. CONCLUSION**

3       After carefully reviewing the administrative record, this Court finds  
4 substantial evidence supports the Commissioner's decision, including the objective  
5 medical evidence and supported medical opinions. The ALJ thoroughly examined  
6 the record, afforded appropriate weight to the medical evidence, including the  
7 assessments of the treating and examining medical providers and medical experts,  
8 and afforded the subjective claims of symptoms and limitations an appropriate  
9 weight when rendering a decision that Plaintiff is not disabled. This Court finds no  
10 reversible error and because substantial evidence supports the Commissioner's  
11 decision, the Commissioner is GRANTED summary judgment and that Plaintiff's  
12 motion for judgment summary judgment is DENIED.

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2 **VI. ORDERS**

3 IT IS THEREFORE ORDERED that:

4 Judgment be entered AFFIRMING the Commissioner's decision and  
5 DISMISSING this action, and it is further ORDERED that

6 The Clerk of the Court file this Decision and Order and serve copies upon  
7 counsel for the parties.

8 DATED this 8th day of August, 2017,

9  
10 /s/Victor E. Bianchini  
11 VICTOR E. BIANCHINI  
12 UNITED STATES MAGISTRATE JUDGE  
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